No. S197744
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

BETWEEN:

MINISO INTERNATIONAL HONG KONG LIMTIED, MINISO INTERNATIONAL (GUANGZHOU) CO. LIMTIED, MINISO LIFESTYLE CANADA INC., MIHK MANAGEMENT INC., MINISO TRADING CANADA INC., MINISO CORPORATION and GUANGDONG SAIMAN INVESTMENT DO. LIMITED

PETITIONERS

AND:

MIGU INVESTMENTS INC., BRAELOCH HOLDING FORTY-ONE INC., BRAELOCH HOLDING INC., BRAELOCH HOLDING ONE INC., BRAELOCH HOLDING TWO INC., BRAELOCH HOLDING THREE INC., BRAELOCH HOLDING FOUR INC., BRAELOCH HOLDING FIVE INC., BRAELOCH HOLDING SIX INC., BRAELOCH HOLDING SEVEN INC., BRAELOCH HOLDING EIGHT INC., BRAELOCH HOLDING NINE INC., BRAELOCH HOLDING TEN INC., BRAELOCH HOLDING ELEVEN INC., BRAELOCH HOLDING TWELVE INC., BRAELOCH HOLDING THIRTEEN INC., BRAELOCH OHLDING FOURTEEN INC., BRAELOCH OHLDING FIFTEEN INC., BRAELOCH HOLDING SIXTEEN INC., BRAELOCH HOLDING SEVENTEEN INC., BRAELOCH HOLDING EIGHTEEN INC., BRAELOCH HOLDING NINETEEN INC., BRALOCH HOLDING TWENTY INC., BRAELOCH HOLDING TWENTY-ONE INC., BRAELOCH HOLDING TWENTY-TWO INC., 1120701 B.C. LTD. and BRIGHT MIGU INTERNATIONAL LTD.

RESPONDENTS

AMENDED APPLICATION RESPONSE

Application response of: **Various JV Investors** (the "JV Investors") as set forth in Schedule "A"

THIS IS A RESPONSE to the Notice of Application of Alvarez & Marsal Canada Inc., in its capacity as court appointed Monitor of the Respondents (the "Monitor"), filed April 27, 2022.

PART 1: ORDERS CONSENTED TO

The JV Investors consent to the granting of the orders set out in paragraphs 2 and 8 to 12 inclusive of Schedule "B" to the Notice of Application.

PART 2: ORDERS OPPOSED TO

The JV Investors oppose the granting of the orders set out in paragraphs 1 and 7 of Schedule "B" to the Notice of Application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The JV Investors take no position on the granting of the orders set out in paragraphs 3, 4, 5 and 6 of Schedule "B" to the Notice of Application.

PART 4: FACTUAL BASIS

Opening Statement

1. It is the position of the creditors listed on Schedule "A to this Response that the Aggregate Chile Payments should indeed be distributed, essentially, to the JV Investor creditors of 112 and Miniso International, but not to all of them.

2. Apart from the Petitioners and the SA Purchaser, as the Notice of Application says, the creditors the Monitor seeks to pay are those JV Investors who advanced funds to Miniso International (now "Bright Migu"), as directed by various officers or employees of Miniso Canada Investments Inc. ("MCI"), although their Investor Agreements had been entered into with MCI. Certain of those funds ultimately made their way to 112, such that those investors are creditors of some combination of 112, Bright Migu, and MCI.

Additional Facts

3. A settlement has been reached amongst the Petitioners, the JV Investors listed on Schedule "A" and the SA Purchaser.

4. Under the Settlement Agreement, the Petitioners waived any interest in the 112/ Bright Migu funds and the SA Purchaser has executed a Release and Disclaimer attached as **Exhibit "A"** to the Affidavit #1 of Darlene Purdy. As a result of the Settlement Agreement, the only parties with potential claims to the Aggregate Chile Payment are JV Investors, including these Respondents.

5. The involvement of 112 in some of the events giving rise to these proceedings which led to the Aggregate Chile Payments was known from early days in this proceeding, although its role was not clear.

First report of the Monitor, page 10

6. By the time of the Monitor's second report, in August of 2019, the Monitor recommended adding 112 as a Respondent in these proceedings, on the basis it was affiliated with Migu Investments, its sole shareholder.

Second report of the Monitor, pages 8 and 15

7. It was added as a Respondent by Order dated August 22, 2019.

8. Also by the time of the second report, it was known that the general scheme of how these proceedings would unfold was that the Petitioners (speaking loosely) had determined that certain of the stores were and would be profitable, and others were not and would not be so. Those stores were identified by the time of the Monitor's second report. Those two groups became known as the Continuing Stores and the Closing Stores.

9. The second report of the Monitor also outlines the basic concept that the Continuing Store JV Investors would continue in their investment by way of receiving dividends from the stores in which they had invested, to be issued by a new company, incorporated to operate those stores. There were 23 investors involved in the Closing Stores, and there were 12 Continuing Stores.

Second report of the Monitor, paragraphs 5.1 to 5.7.

10. The scheme was described in considerably more detail in the Monitor's fifth report. In that report the Continuing Stores were clearly identified and named, as were the Closing Stores. The terms of the Acquisition Agreement were also known by then, and it was known that a portion of the purchase price under the Acquisition Agreement, was a Cash Payment in the amount of $550,000, to be contributed to a plan to be presented for approval to certain landlords and trade creditors. The Closing Store investors who had invested approximately $12,900,000, were not to share in that payment either.

Fifth report of the Monitor, paragraphs 8.1 to 8.5

11. By the time of the sixth report, it had become clear that in fact no plan was intended to be presented to the Closing Store investors at all. The Monitor sought to adjourn the adjudication process which was being conducted with respect to them. It also noted that all JV Investors who had made claims against MCI had filed claims for monies had and received against 112.

Sixth report of the Monitor, paragraphs 12.15 and 13.0 to 13.14

12. In an application filed January 20, 2020, the Monitor sought an order, amongst others, to join then named Miniso International, now Bright Migu, as a Respondent in the CCAA proceedings, and sought an order providing for a claims process with respect to that entity. It did so on the basis that Miniso International was an affiliated company, and advanced the following facts in support of that conclusion:

12.11 The Monitor notes as follows in respect of adding Miniso International to the CCAA Proceedings, and conducting a claims process:.

(a) The Monitor has been unable to obtain the share registry for Miniso International Ltd. to determine whether this identity is related to Miniso Canada. However, based on the corporate search results as of January 27, 2020 (attached hereto as **Appendix D**), the registered and records office of Miniso International is 13600 Maycrest Way, Richmond BC, which is the same registered and records office as many of the Respondents;

(b) The corporate search confirms that the directors of Miniso International are Dan Lin and Ling Lin, who are also directors of many of the Respondents;

(c) Miniso International appears to be involved in the inter-company transactions within Miniso Canada;

...

Seventh report of the Monitor, pages 15 and 16

13. The Monitor also had, by then, been able to trace the investor funds. The Monitor discussed its findings that although all JV contracts were with MCI, some JV investment funds had been directed to Miniso International, and from there, a smaller amount had been sent to 112. The Monitor laid out its thoughts and proposals in paragraph 12.9 of the seventh report, page 15, as follows:

12.9 Based on the Monitor's discussions with its counsel and the Petitioner's counsel, the Monitor is of the view that a second plan of arrangement (or a distribution to the creditors of MC Investments and potentially to all the Non-Migu Plan Companies), including to all of the JV Investors who did not invest in stores that are continuing to operate (the "**JV-No Investors**") could be formulated, if the 1120 Funds are paid to MC Investments. While the Petitioners are the first-ranking secured creditor of MC Investments, they have indicated their willingness to waive their claims if the 1120 Funds are paid to MC Investments in order to allow those funds to be distributed to the remaining creditors of the Non-Migu Plan Companies, provided that the MV-No Investors can participate in the plan of arrangement or distribution.

14. It is the position of these Respondents that that estimable purpose has not come forward on this Application. Included in those the Monitor seeks to pay are a number of Continuing Store investors.

15. Miniso International, now known as Bright Migu International, was added as a Respondent on January 31, 2020, and a claims process was ordered and

conducted with respect to it. The Monitor allowed 43 claims, 42 of which were from JV Investors with contracts with MCI, totalling $6,800,000.

Thirteenth report of the Monitor, paras. 8.1 to 8.5, pages 9 to 10

16. In paragraph 8.9 of the thirteenth report, the Monitor identifies those to whom it wishes to make a distribution. These Respondents say that of those, the following are investors in Continuing Stores:

    (a) 1994993 Ontario Inc.;

    (b) 2633772 Ontario Inc.; and

    (c) Enlight Max Enterprise Inc.

    They are referred to collectively as the "Bright Migu Continuing Stores".

17. All the Continuing Stores ^including the Bright Migu Continuing Stores signed a number of documents pursuant to what was called the Acquisition Agreement, instrumental in effecting the arrangement. Included in those documents was a General Release, which included this clause:

> The Investor, on its own behalf and for and on behalf of its respective directors, officers, employees, representatives, agents, trustees, beneficiaries, contractors, insurers, successors, assigns, affiliates and principals, and each of them as applicable (collectively, the "**Investor Releasors**"), hereby releases, remises and forever discharges the Migu Partner and its respective non-executive employees (excluding directors and officers), representatives, agents, trustees, beneficiaries, contractors, insurers, successors, assigns, and affiliates, and each of them as applicable (collectively the "**Migu Releasees**"), of and from any and all Claims, whether past, present or future, that an Investor Releasor has, may have or have had against a Migu Releasee in relation to the Partnership, the Store or the Store Assets or pursuant to the Partnership Agreement or any other agreements between them or their respective affiliates or principals respecting the Partnership including the Dissolution Agreement.

18. Copies of the relevant documents with respect to 1994993 Ontario Inc. are found at Exhibit "A" to the Affidavit #2 of Darlene Purdy. The relevant documents with respect to 2633772 Ontario Inc. are found at Exhibit "B" and those with respect to Enright Max Enterprises Inc. at Exhibit "C".

19. Each submitted a Proof of Claim against Bright Migu, and against MCI. In each case, the funds, comprising the claim, were advanced to Bright Migu. However, in each case, the Bright Migu Proof of Claim was based on and supported by the JV/Investment Agreement each had entered into with MCI.

20. 2633772's claim, for example, asserts:

> The Claimant makes a claim for amounts advanced under an investment and cooperation agreement (the "Agreement") dated May 25, 2018, between the Claimant and Bright Migu International Ltd. (formerly known as Miniso International Ltd. ("Miniso International"), in respect of a retail store at Scarborough Town Centre.

21. The Agreement it attaches, however, is the Agreement it entered into with MCI, which also forms the basis of the Proof of Claim 2633772 filed against MCI.

22. 1994993 candidly acknowledges that a number of entities, including MCI and Bright Migu are liable for its claim.

23. Enright Max Enterprises, in its Proof of Claim, says that it advanced its funds "to or to others for the account of MCI".

24. Each claim is slightly different in wording, but each acknowledges a single debt owed to it by MCI and Bright Migu. The debt arises from but one Agreement, and the claim against Bright Migu only exists because MCI directed the payments pursuant to the MCI Agreement to be made to Bright Migu International. No matter where the payment went, the consideration for the payment was the promises and terms continued in the MCI Joint Venture/Investor Agreements.

25. In other words, the different claims are all with respect to and for one debt and Bright Migu, MCI and/or 112 are jointly liable for it. The quantum of the Bright Migu Continuing Stores claims as claimed, are as follows:

- 26633772 Ontario Inc. $690,392.65
- 1994993 Ontario Inc. $443,794.36
- Enright Max Enterprises $452,633.73

PART 5: LEGAL BASIS

1. Two grounds are advanced as the legal basis for the disallowance of the JV Investor claims from Continuing Stores.

2. Those two grounds are the wording of the Release executed by Continuing Store investors pursuant to the Acquisition Agreement, and, in the alternative, the general principles applicable to a release of joint debtors.

3. The Release executed by the Continuing Stores defines Miniso Canada Investments Inc. as the "Migu Partner".

4. The operative portion of the Release releases the "Migu Partner" and the customary list of those associated with the "Migu Partner", including "affiliates" and releases those "Releasees" from any and all claims in relation to "the partnership, the store or the store assets or pursuant to the partnership agreement or any other

agreements between them or their respective affiliates or principles respecting the partnership".

5. Both 112 and Bright Migu have been joined as respondents in these proceedings.

6. It has been held that the Court, pursuant to its inherent jurisdiction, can order a stay pursuant to Section 11, with respect to a company which is not, strictly, an affiliated company.

Re *Lehndorff General Partner Inc.*, 1993 O.J. 14

7. However, to join a company as a respondent, and apply the substantive provisions of the Act to it and its creditors, it is necessary for the court to conclude that it is affiliated with others of the respondents.

8. Both 112 and Miniso International were joined in these proceedings on the basis of being affiliated companies. That issue has, therefore, been determined by the court, and it is *res judicata*. The wording of the Release, therefore, operates to directly bar any claims against both 1120 and Miniso International.

8640025 Canada Inc. (Re), 2017 BCCA 303

9. Although the funds of the Bright Migu Continuing Stores were, like the funds of certain of the Closing Store investors, identified as being advanced to 1120 or Bright Migu, it is also the case that those Bright Migu Continuing Stores investors, in exchange for releasing claims to the monies they had advanced, ^ received the ongoing benefits of the advance of those monies by continuing to be^ involved in the Continuing Stores.

10. Ironically, it is also true that those who might be referred to as MCI Continuing Store investors, also signed releases, and also continued to be involved in the Continuing Stores. They will not, however, receive a share of these funds as, unhappily for them, their funds did not happen to be directed by MCI to Bright Migu, by sheer accident.

11. Quite apart from that issue, the effect of the release of the Migu Partner (MCI) is to release both Bright Migu International and 112 by operation of law.

12. It is a rule of some antiquity, described some years ago by Lord Denning as a trap for the unwary, that where A and B are jointly or jointly and severally liable on an obligation to C, and B is released by C, that release operates also to release A from liability for the obligation.

13. The reason for the rule was stated, as long ago as 1797, as follows:

> In fact there is but one duty extending to both obligators; and it was therefore pointedly put that a discharge of one, or satisfaction made by one, is a discharge of both. This puts an end to the argument that the action is

> not necessarily suspended as to both: for it is the effect of the suspension as to one that releases, discharges, and distinguishes the action as to both. [at 633]

Shoker v. Vollans, 1998 CanLII 6447 (BC CA), para. 2

14. Although the rule has been the subject of some criticism, it remains today, and is behind such concepts as covenants not to sue and BC Ferries releases.

15. In *Wam Timberlea Limited Partnership (WAM Group GP Inc.) v. Knight*, 2020 ABQB 735, Master Summers said:

> [23] This principle of law has been described as a trap for the unwary. The effect of its application may produce an injustice. Consequently, the courts have created an exception. That is, if the creditor provides to the joint debtor with whom it settles a covenant not to sue rather than a release, the principle will not apply. The rationale for the distinction is that if the creditor merely provides a covenant not to sue, the joint debtor(s) who remain indebted to the creditor will not be prejudiced and will still be able to make a claim over against the joint debtor who has settled with the creditor, once the remaining joint debtor(s) have paid the creditor.

16. The Rule's most common application is with respect to joint guarantors.

> The distinction between joint and several guarantees is explained in The Law of Guarantee, Kevin Patrick McGuinnes, (Carswell: Toronto, 1986), pp. 110 and 111, para. 4.94:
>
> ...The significance of the distinction between joint and several liability is partly procedural and partly substantive. Where the sureties are severally liable in respect of distinct parts of the same debt, each surety is individually liable for his share only, and each may be sued separately in respect of the portion of the debt to which his liability relates. On the other hand, where the sureties have jointly guaranteed the entire debt, then they are together liable for the full debt, and thus all joint sureties should be joined in any action to recover that debt. To provide procedural flexibility, creditors will often seek to have the liability of two or more sureties made joint and several. By so doing, an action may be brought against any one of the guarantors for the full debt. [Emphasis added]

17. Our Court of Appeal discussed the rule at some length in *Shoker v. Vollans*, 1998 CanLII, 6447. In that case, Madam Justice Newbury, while acknowledging the long existence of the rule, held that the rationale for the rule was that co-obligants are entitled to seek contribution and indemnity from each other.

Shoker, supra, para. 6

18. The law is resistant to a dogmatic application of common law rules. While acknowledging that fact, Madam Justice Newberry also acknowledges that the rule is of such antiquity and has been applied for so long, that its existence is

unquestionable. She finds the logic less compelling when dealing with joint and several obligations, and holds that the application of the rule, in cases where liability is joint and several, may depend on the circumstances, and whether they call for the rule's application.

19. *Shoker* holds:

> [2] The reason for the rule can be readily understood in cases of joint liability. Since a joint obligation is regarded as only one obligation, the common law requires that all persons jointly liable generally must be joined as defendants, and that process be served on all of them by their creditor, before the later may obtain judgment: see Law Reform Commission of British Columbia, ***Report on Shared Liability***, August 1986, at 11. Consistent with the 'one obligation' theory, the release of one co-debtor constitutes a release of the entire debt. Thus in ***Cheetham v. Ward*** (1797) 1 Bos. & P. 630, Eyre J. said:
>
> > In fact there is but one duty extending to both obligors; and it was therefore pointedly put that a discharge of one, or satisfaction made by one, is a discharge of both. This puts an end to the argument that the action is not necessarily suspended as to both: for it is the effect of the suspension as to one that releases, discharges and distinguishes the action as to both. [at 633]
>
> This was echoed by Rooke, J., who noted "... if the action be gone as to one obligor, where two have become bound, it is gone as to both. Now the oblige has it not in his power to elect to discharge one obligor without discharging the other." (at 634)
>
> [3] But where the liability in question is not merely joint, but joint and several, one might have expected a different result. To quote Glanville Williams (***Joint Obligations***, 1949):
>
> > A believer in the logical consistency of English law might therefore be forgiven for supposing that a release of one joint and several convenantor would not work a release of co-covenantor, for, although it would release the joint obligation, it would not release the other several ones. This, however, is not the rule. The rule is that a release of one joint and several covenantor discharges the others, in precisely the same way as with purely joint covenants.
> >
> > The reason for this rule appears to have been an early uncertainty as to the nature of a joint and several obligation ...
> >
> > Whatever the reasons, the rule became settled by a series of cases that followed each other uncritically, and prevails at the present day. The rule is of the same scope as in the case of purely joint obligations; thus it applies to an accord with one as well as to a release under seal to one, but does not apply to a mere covenant not to sue. [at §63]\

20. Here there is no agreement whereby the debtors agreed to be both joint and severally liable. In the circumstances, MCI's obligation and Bright Migu's obligation are joint.

21. In *Agricore Cooperative Ltd. v. Lefley,* 2000 ABQB 169, the Court says:

> 8 *Glenville Williams* in his book *Joint Obligations* says at page 24:
>
> **A joint promise** by two or more persons creates a single obligation incumbent upon both or all. The theory of a **joint and several promise** is that it creates both a joint obligation incumbent upon all and a number of several obligations respectively incumbent upon each one; but the several obligations are none-cumulative, so that (as with purely joint obligations) performance by any one will discharge all. Joint and joint and several promises may be called generically co-promises.
>
> The presumption is that a contract made by two or more persons is joint, express words being necessary to make it joint and several. The usual formula to create a joint and several liability is "A and B jointly and severally promise". (emphasis added)

22. The issue was also addressed in *Belfor (Canada) Inc. v. Drescher,* 2021 BCSC 2403:

> [57] As per *Shoker v. Vollans,* (1998) 163 D.L.R. (4th) 572 (B.C.C.A.), and noted by Fred D. Cas in *The Law of Releases in Canada* (Aurora, Ont.: Canada Law Book, 2006) at 147:
>
> > According to a much-maligned common-law rule, a release of one joint tortfeasor or covenantor [such as a debtor or a guarantor] operates as a release of the other jointly responsible parties. This rule is not specifically tied to the law of releases because, at common law, a judgement against one joint tortfeasor or debtor has the same effect.
> >
> > The rationale for the rule springs from the notion that a joint lability would support only one indivisible cause of action. Since the effect of the release is to extinguish or destroy the underlying cause of action, the release of one joint tortfeasor or covenant tour leaves no cause of action to be pursued against other tortfeasor or joint covenantors. Despite this rationale rule has been extended to joint and several obligations.
>
> [58] While this rule has been the subject of much judicial scrutiny and criticism, such concerns do not apply in the present case. Newbury, J.A. explained in *Shoker* that this rule has become a "trap for the unwary" in situations where creditors release one co-debtor, thus unwittingly releasing all co-debtors and depriving themselves of a cause of action: para. 5. This case present no such concerns. The release clearly indicated that it

> applied to all "assignors or assignees" and delineated the scope of work to which it applied.
>
> (emphasis added)
>
> *Belfor (Canada) Inc. v. Drescher,* 2021 BCSC 2403
>
> See also Law Reform Commission of British Columbia, *Report on Shared Liability,* August, 1986, pp. 4-6

23. The distinction is of no real importance in this case. The fact pattern in *Shoker* does not apply. That case turned on the fact that one guarantor had paid half the debt to secure a release and the Court found, that that fact pattern did not invite application of the rule.

> *Shoker,* supra, para. 7

24. In the case at bar, however, no such payment was made by MCI to obtain the release from the Continuing Store investors. Rather, the release was granted MCI in exchange for the privilege of those investors in essence retaining their investment through the Acquisition Agreement transaction.

25. In most circumstances, there is an agreement creating a joint obligation, like a guarantee, and it is a question of construction whether the agreement creates a joint or a joint and several obligation.

26. Here there is but one agreement, creating one debt, but because funds under that one agreement were directed by MCI to be sent to Bright Migu, both MCI and Bright Migu are jointly responsible for the one debt.

27. Even if the debt were joint and several, the rule applies unless the facts militate against the application of the rule, like the circumstances in *Shoker.* Here, they demand its application.

28. To fail to apply the rule would be serendipitously unfair, both to the Bright Migu Closing Stores and to the MCI Continuing Stores.

29. In the facts of this case, the release of the joint obligant MCI has the effect of releasing the joint obligants Bright Migu International and 112.

PART 6: MATERIALS TO BE RELIED UPON

1. Affidavit #1 of Darlene Purdy, sworn May 5, and filed May 9, 2022.

2. Affidavit #2 of Darlene Purdy, sworn June 30, 2022, and filed herein.

3. First Report of the Monitor, body only.

4. Second Report of the Monitor, body only.

5. Fifth Report of the Monitor, body only.

6. Sixth Report of the Monitor, body only.

7. Seventh Report of the Monitor, body only.

8. Order Made After Application of the Honourable Madam Justice Fitzpatrick, regarding extension of stay, amendment of assignment order and addition of respondent, dated and filed January 31, 2020.

The Application Respondents estimate that the application will take **one hour.**

The Application Respondents have filed in this proceeding a document that contains the application respondent's address for service.

Date: June 30, 2022

H.C. Ritchie Clark, Q.C.
Lawyer for these Application Respondents

SCHEDULE "A"

- 10287865 Canada Inc.
- 10287881 Canada Inc.
- 10306541 Canada Inc.
- 10725951 Canada Inc.
- 1162138 B.C. Ltd.
- 1182193 B.C. Ltd.
- 2121335 Alberta Ltd.
- 2130680 Alberta Ltd.
- 2592256 Ontario Corp.
- 2623211 Ontario Inc.
- 2627413 Ontario Inc.
- 2633134 Ontario Inc.
- 9361-2208 Quebec Inc.
- 9374-8762 Quebec Inc.
- 9374-9828 Quebec Inc.
- 9375-0883 Quebec Inc.
- 9375-1642 Quebec Inc.
- 9376-6319 Quebec Inc.
- A&J Ontario Corp.
- Echo and Alex Management Consulting Ltd.
- JKW Canada Inc.
- KHY & SPS